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17 ARROW ELECTRONICS, INC.

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ARROW ELECTRONICS, INC.,
a New York Corporation,

Plaintiff,

- against -

AETNA CASUALTY & SURETY
COMPANY n/k/a TRAVELERS
CASUALTY & SURETY COMPANY
a/k/a ST. PAUL TRAVELERS, a
Connecticut Corporation; and
LIBERTY MUTUAL INSURANCE
COMPANY, a Massachusetts
Corporation,

Defendants.

Case No. 2:17-cv-5247-JFW-JEM

Hon. John F. Walter
Courtroom 7A

**ARROW ELECTRONICS, INC.'S
ANSWER AND AFFIRMATIVE
DEFENSES TO TRAVELERS
CASUALTY AND SURETY
COMPANY'S COUNTERCLAIM
FOR (1) DECLARATORY
JUDGMENT RE ENTITLEMENT
TO AND AMOUNT OF OFFSET;
AND (2) ACCOUNTING**

1 TRAVELERS CASUALTY AND
2 SURETY COMPANY, f/k/a The
3 Aetna Casualty and Surety Company
4 (erroneously sued as Aetna Casualty &
Surety Company n/k/a Travelers
Casualty & Surety Company a/k/a St.
Paul Travelers)

Case Filed: July 17, 2017
Trial Date: Not Assigned

5 Counter-Claimant,

6 v.

7 ARROW ELECTRONICS, INC.

8 Counter-Defendant.

9
10 Plaintiff ARROW ELECTRONICS, INC. (“Arrow”) submits this
11 Answer and Affirmative Defenses in response to Defendant Travelers Casualty and
12 Surety Company’s (“Travelers”) Counterclaim for (1) Declaratory Judgment Re
13 Entitlement to and Amount of Offset and (2) Accounting (the “Counterclaim”),
14 and alleges as follows:

15 **BACKGROUND FACT ALLEGATIONS**

- 16 1. Arrow admits the allegations in Paragraph 1 of the
17 Counterclaim.
18 2. Arrow admits the allegations in Paragraph 2 of the
19 Counterclaim.
20 3. Arrow admits that the Counterclaim involves the same parties
21 and some of the same underlying facts and issues as pleaded in Arrow’s
22 Complaint, but otherwise denies the allegations in Paragraph 3 of the
23 Counterclaim.
24 4. Paragraph 4 of the Counterclaim sets forth Travelers’
25 characterization of paragraphs 12-24 of Arrow’s Complaint, to which no response

1 is necessary. To the extent a response is necessary, Arrow refers to the allegations
2 in paragraphs 12-24 of its Complaint, which allegations speak for themselves.

3 5. Arrow admits that Travelers sold primary CGL insurance
4 policies to Arrow that were issued in El Segundo, California. Arrow further admits
5 that these policies include coverage for policy periods from, *inter alia*, February 1,
6 1964 through November 1, 1971. Arrow denies the remaining allegations
7 contained in Paragraph 5 of the Counterclaim.

8 6. Arrow admits that Travelers sold excess and/or umbrella CGL
9 insurance policies to Arrow that were issued in El Segundo, California. Arrow
10 further admits that these policies include coverage for policy periods from, *inter*
11 *alia*, February 22, 1990 to January 1, 1986. Arrow denies the remaining
12 allegations contained in Paragraph 6 of the Counterclaim.

13 7. Arrow admits the allegations in Paragraph 7 of the
14 Counterclaim.

15 8. Arrow admits that it litigated with E.ON in courts in the United
16 States and Germany, but otherwise denies the remaining allegations in Paragraph 8
17 of the Counterclaim.

18 9. Paragraph 9 of the Counterclaim references the content of
19 unnamed “press releases” about which Arrow lacks sufficient knowledge or
20 information to admit or deny, and on that basis denies them.

FIRST CLAIMS FOR RELIEF
**(DECLARATORY JUDGMENT – RE TRAVELERS ENTITLEMENT TO
OFFSET FROM ARROW/E.ON SETTLEMENT AND RE THE AMOUNT
OF SUCH OFFSET)**

25 10. Arrow repeats and incorporates by reference its responses to
26 Paragraphs 1-9 of the Counterclaim as if fully set forth herein.

11. Travelers' assertion in Paragraph 11 of the Counterclaim that its Counterclaim presents an actual or justiciable controversy is a conclusion of law for which no response is needed.

12. Arrow admits only that it entered into a settlement with E.ON pursuant to which Arrow received \$110 million, but denies the remaining allegations in Paragraph 12 of the Counterclaim, including any implication that the settlement with E.ON involved the same liabilities that Travelers owes to Arrow under the policies at issue herein.

13. Arrow denies the allegations in Paragraph 13 of the Counterclaim, including any implication that the settlement with E.ON involved the same liabilities that Travelers owes to Arrow under the policies at issue herein.

14. Paragraph 14 of the Counterclaim is a recitation of the declaratory relief that Travelers seeks from the Court for which no response is required. To the extent a response is required, Arrow denies the allegations contained in Paragraph 14 of the Counterclaim.

15. Paragraph 15 of the Counterclaim contains no factual allegations to be admitted or denied, and therefore, no response is necessary. To the extent a response is necessary, Arrow denies the allegations contained in Paragraph 15 of the Counterclaim.

**SECOND CLAIM FOR RELIEF
(ACCOUNTING)
(Against Counter-Defendant Arrow)**

16. Arrow repeats and incorporates by reference its responses to Paragraphs 1-15 of the Counterclaim as if fully set forth herein.

17. The allegations set forth in Paragraph 17 of the Counterclaim contain legal conclusions for which no response is necessary. To the extent a

1 response is necessary, Arrow denies the allegations contain in Paragraph 17 of the
2 Counterclaim.

3 18. In response to Paragraph 18 of the Counterclaim, Arrow admits
4 only that it has not made any allocation of the E.ON settlement proceeds to
5 “offset” Travelers liabilities under the policies. By way of further response, Arrow
6 states that Travelers is not entitled to “an offset of its liabilities” against the E.ON
7 settlement or otherwise. Arrow denies the remaining allegations in Paragraph 18
8 of the Counterclaim.

9 19. The allegations set forth in Paragraph 19 of the Counterclaim
10 contain legal conclusions for which no response is necessary. To the extent a
11 response is necessary, Arrow lacks sufficient knowledge or information about
12 Travelers’ beliefs or what information Travelers has in its possession to admit or
13 deny these allegations. By way of further response, Arrow denies the remaining
14 allegations in Paragraph 19 of the Counterclaim, including the implication that any
15 portion of the E.ON settlement may be allocated to reduce Travelers’ coverage
16 obligations under the policies it sold to Arrow.

17 20. The allegations set forth in Paragraph 20 of the Counterclaim
18 contain legal conclusions for which no response is necessary. To the extent a
19 response is necessary, Arrow lacks sufficient knowledge about what information
20 Travelers has in its possession to admit or deny these allegations. By way of
21 further response, Arrow denies the remaining allegations contained in Paragraph
22 of the Counterclaim.

1 **ARROW'S AFFIRMATIVE DEFENSES**

2 **First Affirmative Defense**

- 3 1. Travelers' Counterclaim fails to state a claim upon which relief
4
5 can be granted.

6 **Second Affirmative Defense**

- 7 2. Travelers is precluded from prevailing in the Counterclaim due
8
9 to its material breach of the insurance policies it sold to Arrow.

10 **Third Affirmative Defense**

- 11 3. Travelers has waived any claims and defenses it may have
12
13 against Arrow by virtue of its material breach of the insurance policies it sold to
14 Arrow.

15 **Fourth Affirmative Defense**

- 16 4. To the extent that any provisions in the Travelers policies are
17
18 ambiguous, they must be interpreted in favor of coverage for Arrow.

19 **Fifth Affirmative Defense**

- 20 5. To the extent that Arrow reasonably expected coverage for
21
22 claims like those involved in this action, such expectations must be honored and
23 are enforceable in favor of coverage for Arrow.

Sixth Affirmative Defense

6. Travelers' rights and claims against Arrow, if any, are barred by the equitable doctrine of laches.

Seventh Affirmative Defense

7. Travelers' rights and claims against Arrow, if any, are barred by the equitable doctrine of estoppel.

Eighth Affirmative Defense

8. Travelers' rights and claims against Arrow, if any, are barred by the equitable doctrine of waiver.

Ninth Affirmative Defense

9. Travelers' rights and claims against Arrow, if any, are barred by the equitable doctrine of unclean hands.

Tenth Affirmative Defense

10. Travelers' rights and claims against Arrow, if any, are barred by the equitable doctrine of unjust enrichment.

Eleventh Affirmative Defense

11. Travelers' Counterclaim is barred due to Travelers' breach of the implied covenant of good faith and fair dealing.

Twelfth Affirmative Defense

12. Travelers' Counterclaim is barred for the reasons set forth in Arrow's Complaint filed in this action, which Arrow incorporates by reference as if fully set forth herein.

Thirteenth Affirmative Defense

13. Arrow reserves the right to supplement or amend these Affirmative Defenses as facts supporting further Affirmative Defenses are discovered.

WHEREFORE, Arrow demands that judgment be entered in its favor and against Travelers, dismissing Travelers' Counterclaim, and awarding pre-judgment and post-judgment interest, and attorney's fees, together with such other and further relief as the Court deems just and proper.

Dated: August 30, 2017

ANDERSON KILL P.C.

By: /s/ Finley Harckham
Finley Harckham

Attorneys for Plaintiff
Arrow Electronics, Inc.

PROOF OF SERVICE

I hereby certify that on August 30, 2017, I electronically filed a copy
of **PLAINTIFF ARROW ELECTRONICS, INC.'S ANSWER AND**
AFFIRMATIVE DEFENSES TO TRAVELERS CASUALTY AND SURETY
COMPANY'S COUNTERCLAIM, with the United States District Court
CM/ECF system, and pursuant to that system, notification of the filing was sent
electronically to the parties on the attached Service List.

/s/ Finley Harckham

Finley Harckham
Attorney for Plaintiff
Arrow Electronics, Inc.

SERVICE LIST

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